

# Vergebung Macht Frei—Forgiveness Liberates: The Need for Restorative Justice in the Resolution of Holocaust-like Crimes

KAITLYN N. PYTLAK\*

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\* Attorney at Flaherty Sensabaugh Bonasso PLLC in Charleston, West Virginia; Former Executive Notes Editor, West Virginia Law Review Volume 118; J.D. West Virginia University College of Law; B.A. Wheeling Jesuit University. The Author would like to thank her parents, siblings, and family for their eternal love and support. Without you, I would be nothing. Lastly, and most importantly, the Author wishes to thank Eva Mozes Kor for sharing her incredible journey of forgiveness with the world. Don't forget, forgiveness liberates!

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“I believe with every fib[er] of my being that every human being has the right to live without the pain of the past. For most people there is a big obstacle to forgiveness because society expects revenge. It seems we need to honour our victims but I always wonder if my dead loved ones would want me to live with pain and anger until the end of my life. Some survivors do not want to let go of the pain. They call me a traitor and accuse me of talking in their name. I have never done this. Forgiveness is as personal as chemotherapy—I do it for myself.”<sup>1</sup>

## I. INTRODUCTION

During the early years of the 1940s, terror and destruction rampantly obliterated the Jewish population in Eastern Europe.<sup>2</sup> While many people have studied this horrific event because of its historical significance, most people have researched the Holocaust to scrutinize the inhumane atrocities that were committed by the Nazis. Historians from all around the world have examined this event—they have investigated the propaganda, analyzed the psychology, and reviewed the brutality. While some individuals continue to blindly deny this catastrophe, the ugly truth remains: nearly two-thirds of Europe’s Jewish population was exterminated within a span of just a few years.<sup>3</sup> Fortunately, in the years following the end of World War II, many Nazi leaders were prosecuted through military tribunals famously known as the Nuremberg Trials.<sup>4</sup>

Yet, despite the publicity and notoriety attributed to the Nuremberg Trials, criminal prosecution is just one example of resolving disputes in our society today. In the United States, alternative dispute resolution techniques such as mediation, negotiation, and arbitration are gaining popularity.<sup>5</sup> For example,

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<sup>1</sup> Eva Mozes Kor quoted in *Eva Kor (Poland)*, THE FORGIVENESS PROJECT (Mar. 29, 2010), <http://theforgivenessproject.com/stories/eva-kor-poland/>.

<sup>2</sup> LUCY DAWIDOWICZ, *THE WAR AGAINST THE JEWS* 403 (1975).

<sup>3</sup> *Id.*

<sup>4</sup> Over the years, there has been much fascination with the Nuremberg Trials. The following is a concise—and by no means conclusive—list of television shows and movies inspired by the notorious trials: *THE NUREMBERG TRIALS* (Artkino Pictures 1947); *JUDGMENT AT NUREMBERG* (Roxlom Films, 1961); *NUREMBERG* (Alliance Atlantis Communications 2000).

<sup>5</sup> *Alternative Dispute Resolution*, LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution) (last visited Apr. 6, 2016).

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in Utah, parties in divorce cases are required to attend at least one mandatory mediation session.<sup>6</sup> Alternative dispute resolution techniques are becoming a contemporary phenomenon in twenty-first century judicial systems; however, these alternative methods are not being utilized equally in all areas of the law.

With regard to Holocaust victims and their Nazi tormentors, alternative dispute resolutions may—at first glance—seem like an appalling and futile option. Meanwhile, a version of alternative dispute resolution—known as restorative justice—has succeeded in Holocaust victim scenarios, and it offers a solution for victims and oppressors to heal in a cathartic and liberating manner.<sup>7</sup>

The crimes committed in Europe during the Holocaust were brutally executed, racially motivated, and—most significantly—personal in nature. As such, the face-to-face setup of restorative justice can be both incredibly difficult and immensely rewarding. According to the Centre for Justice and Reconciliation:

[R]estorative justice views crime as more than breaking the law—it also causes harm to people, relationships, and the community. [Therefore,] a just response must address those harms as well as the wrongdoing. If the parties are willing, the best way to do this is to help them meet to discuss those harms and how to bring about resolution.<sup>8</sup>

Furthermore, many scholars in the restorative justice field argue that this type of resolution focuses not just on resolution, but on repairing the harm caused by the crime.<sup>9</sup>

One of the most amazing and heartwarming examples of restorative justice in action is the story of Eva Mozes Kor. In 1944—at the young age of ten—Eva, her twin sister Miriam, and the rest of her family were transported from Romania to the ominous gates of the Auschwitz death camp—which read *Arbeit Macht Frei*: Work Liberates.<sup>10</sup> Because of the Nazi fascination with twins, “Eva and Miriam became part of a group of children used as human guinea pigs in genetic experiments under the direction of Dr. Josef Mengele.

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<sup>6</sup> *Divorce Mediation Program*, UTAH COURTS (Jul. 7, 2015), <http://www.utcourts.gov/mediation/divmed/>.

<sup>7</sup> *Eva Kor (Poland)*, *supra* note 1.

<sup>8</sup> *What is Restorative Justice?*, CTR. FOR JUSTICE AND RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/> (last visited Apr. 6, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *Eva Kor, Biography*, CANDLES HOLOCAUST MUSEUM, <http://www.candlesholocaustmuseum.com/about/eva-kor.htm> (last visited Apr. 6, 2016).

Approximately 1,500 sets of twins—3,000 children—were abused, and most died as a result of these experiments.”<sup>11</sup> Luckily, Eva and her sister survived. However, Eva carried around anger and resentment for decades. Then, in 1995—fifty years after liberation—Eva visited Auschwitz hand-in-hand with Dr. Hans Münch, a Nazi doctor. It was at that moment that Eva publicly forgave the Nazis for what they did to her and her family—and at last, she was truly liberated.<sup>12</sup>

Ultimately, this article argues that restorative justice should be utilized more often to repair the harm caused to victims by criminal oppressors in Holocaust-like situations. If alternative dispute resolutions are expected to be used more often, then judicial systems need to be willing to apply these techniques to more types of scenarios. Alternative dispute resolutions, such as restorative justice, should be instituted in Holocaust-like situations because victims of catastrophic crimes deserve the opportunity to face their oppressors in a civil environment that gives them control of the situation; provides a forum that allows the victims to communicate openly with their oppressors; and transforms the lives of both cooperating parties in a manner that values their effort and collaboration. For the purposes of this article, the phrase “Holocaust-like crimes” refers to a wide variety of violent offenses that disrupt societies, deprive victims, and disparage human boundaries. To illustrate the need for restorative justice, an examination of Eva Mozes Kor’s successful experience with restorative justice will be analyzed and used as evidence to support the notion that alternative dispute resolution can and should be used in Holocaust-like situations.

Part II of this article outlines the story of Eva Mozes Kor, her life as a victim of the Holocaust, and her cathartic experience with restorative justice. Then, a brief history of the Nuremberg Trials will be explored and presented as the current method of resolving Holocaust-like crimes. The positive aspects of criminal prosecution will be analyzed along with a short outline of the setbacks and shortcomings of trial. Next, the restorative justice approach will be discussed and analyzed. Part III of this article then fully addresses the shortcomings of prosecution and argues—using the success of Eva Mozes Kor’s experience—that an alternative structure founded on restorative justice is necessary because it would repair relationships, promote an open dialogue between victims and oppressors, and develop an atmosphere where victims are able to move forward with their lives and attain self-peace and justice. Lastly, Part IV concludes by summarizing the major points presented in this article.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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### II. BACKGROUND

Until the beginning of the 1930s, German Nazism was not a recognized or pervasive threat in Europe.<sup>13</sup> In 1919, the Nazis formed under the name, National Socialist German Workers' Party, and the party worked to promote German nationalism, dissatisfaction with the Treaty of Versailles, and most infamously—anti-Semitism.<sup>14</sup> Yet, it was not until 1933 that German Nazism grew to be a totalitarian power governed under the dictatorial leadership of Adolf Hitler.<sup>15</sup> With Hitler's rise in power, Nazism quickly became a growing issue—by the end of World War II, nearly six million Jews were exterminated at Hitler's command.<sup>16</sup>

Eventually, a handful of war criminals were charged and brought to justice at an international military tribunal—the Nuremberg Trials.<sup>17</sup> Although the judges at the Nuremberg Trials convicted many of the war criminals, this so-called resolution failed to bring closure and justice to the victims.<sup>18</sup> As former United States Secretary of War, Walter Stimson, noted: “A single landmark of justice and honor does not make a world of peace.”<sup>19</sup> These trials have been debated and analyzed by historians and scholars, yet an adequate resolution has not been found.

Section A of this Part examines the background of Holocaust survivor, Eva Mozes Kor, who was subjected to the horrid medical experiments of Dr. Josef Mengele. Section A will also detail Kor's successful experience with restorative justice and the transformational qualities that accompany forgiveness. Next, Section B examines the methods that are currently used to resolve Holocaust-like crimes. Specifically, criminal trials—such as the Nuremberg Trials—and the newer approach—the Demjanjuk Precedent—will be explored. Lastly, Section C offers a viable approach that will supplement the inadequacies of criminal persecution. Here, the restorative justice approach will be examined.

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<sup>13</sup> *World War II: Nazi Party*, HISTORY (2009), <http://www.history.com/topics/world-war-ii/nazi-party>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *The “Final Solution”: Estimated Number of Jews Killed*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/jsource/Holocaust/killedtable.html> (last visited Apr. 5, 2016).

<sup>17</sup> *The Nuremberg Trials*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <http://www.ushmm.org/outreach/en/article.php?ModuleId=10007722> (last visited Apr. 5, 2016).

<sup>18</sup> *The Nuremberg Trials and Their Legacy*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/nuremberg-trials-legacy> (last visited Apr. 5, 2016).

<sup>19</sup> *Id.*

## A. PORTRAIT OF A HEROINE IN THE RESTORATIVE JUSTICE SYSTEM

Former Prime Minister of the United Kingdom, Benjamin Disraeli, once stated that “[j]ustice is truth in action.”<sup>20</sup> For some individuals, particularly victims of violent crimes, justice comes into existence once the truth of the crime is out in the open. This expression, perhaps, applies to no one more than Holocaust victim and survivor, Eva Mozes Kor. Not only did Kor experience the Holocaust as a young child, but she furiously fought and found her way to survival.<sup>21</sup> Years later, after decades of experiencing anger and hatred, Kor took justice into her own hands and confronted her Nazi tormentors—and then she forgave them. Once seen as unthinkable, Kor’s brave utilization of forgiveness and negotiation gave the restorative justice system new life.

1. *Eva Mozes Kor: Victim and Survivor of the Mengele Experiments*

According to historical records, as many as 1.5 million children were killed during the Holocaust.<sup>22</sup> While most children were exterminated immediately upon arrival at the death camps,<sup>23</sup> many were killed after being subjected to a series of medical experiments.<sup>24</sup> Specifically, Nazi physician Dr. Josef Mengele garnered notoriety through his curiosity surrounding the genetic similarities of twins.<sup>25</sup> Because of his infamous experiments on twins—usually young children—most of his “patients” were killed or left with lifelong debilitating ailments.<sup>26</sup>

Mengele had become interested in utilizing twins for medical research through Verschuer, famous for experimenting with identical and fraternal twins in order to trace the genetic origins of various diseases. During the 1930s, twin research was seen as an ideal tool in weighing the variant factors of human heredity and environment. Mengele, with his mentor, had performed a number of legitimate research protocols using twins as test subjects throughout the 1930s. Now, at Auschwitz, with full license to maim or kill his subjects,

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<sup>20</sup> 114 Parl Deb HC (3d ser.) (1851) §412 (UK).

<sup>21</sup> *Eva Kor (Poland)*, *supra* note 1.

<sup>22</sup> *Children During the Holocaust*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005142> (last visited Apr. 5, 2016).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Josef Mengele*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007060> (last visited Apr. 5, 2016).

<sup>26</sup> See generally *Eva Kor, Biography*, *supra* note 10.

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Mengele performed a broad range of agonizing and often lethal experiments with Jewish and Roma (“Gypsy”) twins, most of them children.<sup>27</sup>

Overall, Dr. Mengele experimented on sets of twins for nearly two years at Auschwitz and while most of the twins were separated by death, others were fortunate enough to survive.<sup>28</sup> Among the survivors were Eva and Miriam Mozes.<sup>29</sup>

Eva and Miriam Mozes were born into a Jewish family on January 30, 1934, in the small village of Portz, Romania.<sup>30</sup> The Mozes twins enjoyed a happy upbringing until they and their family were forcibly moved to a ghetto, and then later, to the Auschwitz death camp in early 1944.<sup>31</sup> Upon arrival, Eva and Miriam were quickly separated from the rest of their family—this would be the last time the twins would ever see their parents and siblings.<sup>32</sup> Over the course of the next year, the newly orphaned twins would be subjected to some of the most depraved genetic experiments conducted in the modern history of mankind.<sup>33</sup>

When the Mozes twins arrived at Auschwitz, they became part of a genetic study that included over 1,500 sets of twins.<sup>34</sup> Years later, Eva recalled the grueling experience of entering the notorious concentration camp:

When the doors to our cattle car opened, I heard SS soldiers yelling, “Schnell! Schnell!”, and ordering everybody out. My mother grabbed Miriam and me by the hand. She was always trying to protect us because we were the youngest. Everything was moving very fast, and as I looked around, I noticed my father and my two older sisters were gone. As I clutched my mother’s hand, an SS man hurried by shouting, “Twins! Twins!” He stopped to look at us. Miriam and I looked very much alike. “Are

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<sup>27</sup> Josef Mengele, *supra* note 25.

<sup>28</sup> *Id.*

<sup>29</sup> *Eva and Miriam*, AUSCHWITZ.DK, <http://www.auschwitz.dk/eva.htm> (last visited Apr. 5, 2016).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Carl Schreck, ‘I Was No Longer A Child:’ *Auschwitz Survivor Eva Mozes Kor*, RADIO FREE EUROPE RADIO LIBERTY, (Jan. 25, 2015), <http://www.rferl.org/content/auschwitz-survivor-eva-mozes-kor/26812368.html>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

they twins?" he asked my mother. "Is that good?" she replied. He nodded yes. "They are twins," she said.<sup>35</sup>

From day one, the Mozes twins were treated as human guinea pigs by Dr. Josef Mengele—they underwent rigorous physical examinations, they experienced death and violence daily, and they received routine injections of both viral and bacterial compounds.<sup>36</sup>

At the young age of ten, Eva and her twin essentially lost their innocence. While most children their age were playing make-believe and attending the fourth grade, Eva and Miriam were being subjected to some of the most brutal atrocities in the twentieth century. "The sisters were put through many extremely brutal surgeries and experiments by Mengele, who experimented mainly on twins."<sup>37</sup>

Years later, Eva recounted the details of one of Dr. Mengele's diabolical experiments. One day, she was given multiple injections which caused her to develop an extremely high fever.<sup>38</sup> Dr. Mengele and four other doctors examined her the next morning; they looked at her fever chart, and Dr. Mengele said, chuckling: "Too bad, she is so young. She has only two weeks to live."<sup>39</sup>

On another occasion, Eva witnessed a set of Gypsy twins being brought back from Dr. Mengele's laboratory after they were sewn back to back.<sup>40</sup> Dr. Mengele had attempted to build a set of Siamese twins "by connecting blood vessels and organs. The twins screamed day and night until gangrene set in, and after three days, they died."<sup>41</sup>

These are just a handful of the massacres that Eva Mozes Kor witnessed every day during her imprisonment at Auschwitz. Yet, unlike the majority of Mengele's twins, Eva and Miriam eventually walked out of the death camp hand-in-hand, liberated.<sup>42</sup> "On January 27, 1945, the Soviet army entered Auschwitz and liberated more than 7,000 remaining prisoners, who were mostly ill and dying."<sup>43</sup>

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<sup>35</sup> *Eva and Miriam*, *supra* note 29.

<sup>36</sup> Schreck, *supra* note 32.

<sup>37</sup> *Eva Mozes Kor*, MENGELE.DK, <http://www.mengele.dk/eva.htm> (last visited Apr. 5, 2016).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Liberation of Auschwitz*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/liberation-of-auschwitz> (last visited Apr. 5, 2016).

<sup>43</sup> *Id.*



2. *Friend of Forgiveness: Eva Mozes Kor's Experience with Restorative Justice*

After being liberated in 1945, Eva returned to her native Romania—only to discover that her family had been completely exterminated.<sup>44</sup> She moved to Israel to find a new life in 1950, and “[o]ver the next 10 years, [she] received a good education from an agricultural school, and went on to attain the rank of Sergeant Major in the Israeli Army Engineering Corps.”<sup>45</sup> Yet, despite marrying the love of her life,<sup>46</sup> moving to the United States,<sup>47</sup> and starting a family of her own,<sup>48</sup> Eva Mozes Kor was still haunted by the horrors of her youth.<sup>49</sup>

In life, an individual's past follows them—and Eva Mozes Kor's past was no different. “For decades Eva struggled to make sense of the trauma she suffered at Auschwitz. Then an encounter with a death camp doctor changed her life.”<sup>50</sup> The terrible atrocities that Eva suffered prohibited her from living a full life. Then, in 1993, Eva was invited to speak about the Holocaust with a panel of physicians in Boston.<sup>51</sup> As part of the talk, the physicians asked her if she could bring a Nazi doctor along with her.<sup>52</sup> Years later, she commented on this life changing moment:

I thought it was a mad request until I remembered that I'd once been in a documentary which had also featured a Dr[.] Hans Münch from Auschwitz. I contacted him in Germany and he said he would meet with me for a videotaped interview to take to the conference. In July 1993 I was on my way to meet this Nazi doctor. I was so scared but when I arrived at his home he treated me with the utmost respect. I asked him if he'd seen the gas chambers. He said this was a nightmare he dealt with every day of his life. I was surprised that Nazis had nightmares too and asked him if he would come with me

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<sup>44</sup> *Eva Kor, Biography, supra* note 10.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Holocaust Forgiveness Advocate Eva Kor*, PBS (July 13, 2007), <http://www.pbs.org/wnet/religionandethics/2007/07/13/july-13-2007-holocaust-forgiveness-advocate-eva-kor/3126/>.

<sup>50</sup> *Id.*

<sup>51</sup> *Eva Kor (Poland), supra* note 1.

<sup>52</sup> *Id.*

to Auschwitz to sign a document at the ruins of the gas chambers. He said that he would love to do it.<sup>53</sup>

After four months of penning the perfect “Thank You” letter to Dr. Münch, Eva decided to expand her personal brand of restorative justice to all other Nazis—essentially, she went to Auschwitz hand-in-hand with Dr. Münch and publicly forgave the Nazis for the atrocities they committed.<sup>54</sup> “An incredible weight of suffering was lifted and she felt strong. Offering her forgiveness healed Eva, but it did not mean she would forget or that it changed what happened.”<sup>55</sup>

To this day, Eva remains actively involved in educating others about the power of forgiveness. In the 1990s, Eva founded the CANDLES Holocaust Museum and Education Center in Terre Haute, Indiana.<sup>56</sup> There, she shares with others her experience of dealing with restorative justice, and “the importance of respect, equality, and peace.”<sup>57</sup>

#### B. *Inadequate Measures: Current Methods Used to Resolve Holocaust-like Crimes*

Currently, Holocaust-like crimes such as genocides, school shootings, and maritime disasters are resolved by litigation. Criminal charges and ultimately criminal convictions can be marginally effective, but the victims are usually left feeling empty and conflicted. As such, new methods should be introduced to adequately compensate victims. While some individuals such as Eva Mozes Kor have found success in the restorative justice system, most have never been introduced or exposed to these alternative measures.

After the end of World War II, the world was ready to make the Nazis pay for their horrendous war crimes. Some individuals wanted to conduct a literal witch-hunt, while others preferred a more civilized form of resolution to seek justice: criminal prosecution. In late 1945, the Nuremberg Trials began in Nuremberg, Germany and nineteen major Nazi criminals were sentenced to death or prison in the first major trial.<sup>58</sup> Yet, despite the handful of prosecutions, most Nazis escaped, were acquitted, or committed suicide. Here, Part II.B introduces the current methods used to resolve Holocaust-like crimes.

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<sup>53</sup> *Id.*

<sup>54</sup> Rob Kuznia, *Why Eva Kor Forgave the Nazis*, UNIVERSITY OF SOUTHERN CALIFORNIA SHOAH FOUNDATION (Feb. 27, 2015), <http://sfi.usc.edu/blog/rob-kuznia/why-eva-kor-forgave-nazis>.

<sup>55</sup> *Eva Kor, Biography*, *supra* note 10.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *The Nuremberg Trials*, *supra* note 17.

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Specifically, the Nuremberg Trials and the Demjanjuk Precedent will be explored to illustrate the inadequacy of current methods.

### 1. *Not Enough: A Brief Look at the Nuremberg Trials*

After Adolf Hitler's rise to power in the mid-1930s, racial purification became a top Nazi priority, and by the end of World War II in 1945, nearly six million Eastern Europeans were exterminated.<sup>59</sup> Because of this enormous disregard for human life, the Allied Powers—including the United States, the USSR, France, and the United Kingdom, together known as the Big Four—"eventually established the laws and procedures for the Nuremberg Trials with the London Charter of the International Military Tribunal (IMT), issued on August 8, 1945."<sup>60</sup> Between 1945 and 1949, thirteen trials were held in Nuremberg, Germany, with the intent of prosecuting Nazi war criminals.<sup>61</sup>

Despite the developed planning and sophisticated techniques that surrounded the Nuremberg Trials, it was not the cathartic relief that many victims were hoping to experience. For example, many of the top Nazi officials—including Hitler, Himmler, and Goebbels—committed suicide before the beginning of the trials.<sup>62</sup> Others, such as Dr. Josef Mengele, fled the country and went into hiding until their death.<sup>63</sup> By the end of the Nuremberg Trials, only a small fraction of Nazis were brought to justice, while "the vast majority evaded prosecution by concealing their war records, assuming false identities, fleeing Europe, or serving Allied governments as spies or scientists."<sup>64</sup> To say the least, the Nuremberg Trials did not fully bring victims the justice they wanted or deserved.

### 2. *Deserving Destiny: The Demjanjuk Precedent*

In addition to the Nuremberg Trials, another form of resolution has arisen in recent years. An offshoot of the traditional criminal trial, the Demjanjuk Precedent is a modern method of bringing Nazi war criminals to justice decades after the crimes were committed. Previously, to convict Nazi officials,

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<sup>59</sup> *The "Final Solution"*, *supra* note 16.

<sup>60</sup> *World War II: Nuremberg Trials*, HISTORY (2010), <http://www.history.com/topics/world-war-ii/nuremberg-trials>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Associated Press, *Names of 250 Nazi War Criminals Still in Hiding Revealed*, LOS ANGELES TIMES (May 18, 1987), [http://articles.latimes.com/1987-05-18/local/me-464\\_1\\_nazi-war-criminals](http://articles.latimes.com/1987-05-18/local/me-464_1_nazi-war-criminals).

<sup>64</sup> *Elusive Justice: The Search for Nazi War Criminals*, PBS (Nov. 2011) <http://www.pbs.org/program/elusive-justice/>.

specific evidence had to be presented regarding specific times, specific dates, and specific locations.<sup>65</sup> Then, in 2011, John Demjanjuk—a Nazi guard at the Sobibor death camp—was convicted in Germany which created “a legal precedent for interpreting evidence more broadly than before.”<sup>66</sup>

Ultimately, because evidence is now being considered in a more liberal manner, international courts now have the ability to bring World War II Nazis to justice. Because of the standard set by the “Demjanjuk precedent, guards who worked at death camps [can] now be charged with abetting, contributing to, or being complicit in the killings that took place.”<sup>67</sup>

For instance, in May 2013, ninety-three-year-old Hans Lipschis—a purported cook at Auschwitz—was convicted for his complicity in mass murders.<sup>68</sup> By now, the Nazi leaders of the Holocaust are in their eighties and nineties, yet people around the world continue the crusade to bring over fifty living Nazis to justice.<sup>69</sup> Efraim Zuroff,

the Chief Nazi Hunter for the Simon Wiesenthal Center, a global Jewish human rights organization whose mission includes confronting anti-Semitism and promoting tolerance stated that “[t]he passage of time in no way diminishes the guilt of the killers. Old age should not provide protection. The fact that they have reached an elderly age does not turn them into righteous gentiles.”<sup>70</sup>

Today, the Demjanjuk Precedent is the current method for convicting Nazis involved in the Holocaust—essentially making the Nuremberg Trials and their evidentiary standards obsolete.

### C. *A Viable New Approach: Restorative Justice and the Forgiving Resolution*

Although there is no definitive definition of restorative justice, it can generally be described as an alternative dispute resolution focused on victim healing and victim-offender communication.<sup>71</sup> Stemming from dissatisfaction

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<sup>65</sup> Diane Cole, *A Final Effort to Find Nazi War Criminals*, NAT’L GEOGRAPHIC (May 10, 2013), <http://news.nationalgeographic.com/news/2013/13/130507-nazi-war-criminal-holocaust-auschwitz-hans-lipschis-simon-wiesenthal-center-demjanjuk/>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Restorative Justice*, NATIONAL NAT’L INSTITUTE INST. OF JUST. (Nov. 26, 2007), <http://www.nij.gov/topics/courts/restorative-justice/Pages/welcome.aspx>.

with the justice system as a whole, the restorative justice approach continues to be an emerging force within the realm of dispute resolution.<sup>72</sup>

In the 1980s and 1990s, restorative justice began to infiltrate the North American justice system as a viable alternative to full-scale litigation.<sup>73</sup> However, despite its relative newness in the modern United States, restorative justice began centuries ago as the foundation for ancient practices in Arab, African, Asian, Native American, and Hebrew cultures.<sup>74</sup> Eventually, after the creation of the first victim-offender reconciliation program in Canada in the late 1970s, the restorative justice approach spread to the United States.<sup>75</sup>

Unlike traditional litigation, the restorative justice approach allows the victims and offenders to meet face-to-face.<sup>76</sup> “The three primary stakeholders in restorative justice are victims, offenders, and their communities of care, whose needs are, respectively, obtaining reparation, taking responsibility, and achieving reconciliation.”<sup>77</sup> “Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders. This can lead to transformation of people, relationships, and communities.”<sup>78</sup>

In most situations, the parties come to the table with feelings of hesitancy, trepidation, and even fear.<sup>79</sup> Victims are usually uneasy about sitting face-to-face with the offender who caused great harm to their lives. Similarly, offenders are often nervous to take responsibility for the criminal actions that they have committed. Yet, in the majority of cases, although both parties enter the room full of fear, they often both leave feeling relieved, refreshed, and restored. Overall, restorative justice boasts many benefits:

- It substantially reduces repeat offending for some offenders, although not all;
- It reduces repeat offending more than prison for adults and at least as well as prison for youths;
- It doubles (or more) the offences brought to justice as diversions from criminal justice;

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<sup>72</sup> *Id.*

<sup>73</sup> *What is Restorative Practices?*, INTERNATIONAL INT’L INSTITUTE INST. FOR RESTORATIVE PRAC., <http://www.iirp.edu/what-we-do/what-is-restorative-practices> (last visited Apr. 5, 2016).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Tutorial: Introduction to Restorative Justice*, CTR. FOR JUSTICE JUST. AND RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice> (last visited Apr. 5, 2016).

<sup>79</sup> *Id.*

- When used as a diversion it helps reduce the costs of criminal justice;
- It provides both victims and offenders with more satisfaction than justice had been done than did traditional criminal justice;
- It reduces crime victims' post-traumatic stress symptoms and the related costs; and
- It reduces crime victims' desire for violent revenge against their offenders.<sup>80</sup>

Clearly, the restorative justice approach has many beneficial outcomes that can and should be utilized in a wider variety of situations. Some of these situations—where the restorative justice approach should be used—include Holocaust-like crimes such as maritime disasters, attacks of mass violence, and other such crimes where hatred and deep-seated emotions dominate.

### III. ANALYSIS

This article argues that restorative justice should be utilized more often to repair the harm caused to victims by criminal oppressors in Holocaust-like situations. If alternative dispute resolutions are expected to be used more often, then judicial systems need to be willing to apply these techniques to more types of scenarios. Alternative dispute resolutions, such as restorative justice, should be utilized more often to repair the harm caused to victims by criminal oppressors in Holocaust-like situations because victims of catastrophic crimes deserve the opportunity to face their oppressors in a civil environment that gives them control of the situation. Alternative dispute resolutions can provide a forum that allows the victims to communicate openly with their oppressors, and these resolutions have the potential to transform the lives of both cooperating parties in a manner that values their effort and collaboration.

Above, in Part II, the Holocaust was examined as well as the past methods used to resolve the disputes stemming from this man-made human atrocity. Directly after the end of World War II, the Allied Powers gathered and decided that the best way to bring Nazi officials to justice was criminal prosecution. As a result of this decision, the Nuremberg Trials were born. Highly publicized and majorly supported, the Nuremberg Trials were a very public condemnation of the Nazis and their actions during the war. Yet, despite the handful of convictions, many Nazis either escaped or committed suicide.

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<sup>80</sup> *Benefits of Restorative Justice*, CTR. FOR JUST. AND RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-6-benefits-of-restorative-justice/> (last visited Apr. 5, 2016).

Furthermore, victims of the Holocaust were left feeling empty, traumatized, and cheated. At first glance, criminal prosecution seems like the best option for resolving mass atrocities, but after a second look, it appears that that may not be the case.

Here, in Part III, Section A argues that restorative justice techniques need to be instituted to overcome the inadequacies of litigation in Holocaust-like situations. The benefits of restorative justice will be explored in detail and Holocaust survivor Eva Mozes Kor's experience will be used to illustrate the advantageous results. Then, in Section B, the applicability of restorative justice to other Holocaust-like situations such as maritime disasters and attacks of mass violence will be addressed and a solution based on Eva Mozes Kor's experience will be suggested.

In 1995, Holocaust victim and survivor, Eva Mozes Kor, visited Auschwitz side-by-side with former Nazi doctor, Dr. Hans Münch.<sup>81</sup> At that moment, "Eva read Dr. Münch's signed witness statement to contradict those who denied the Holocaust. To the surprise of many, she then freed herself from her victim status and announced to the world that—in her name alone—she forgave the Nazis."<sup>82</sup> Then, in 2015, Mozes Kor utilized the restorative justice approach once again when she attended the trial of Nazi guard, Oskar Groening.<sup>83</sup> After testifying, she approached Groening and told him that she wanted to "thank him for having some human decency in accepting responsibility for what he ha[d] done."<sup>84</sup> Groening then embraced her and kissed her on the cheek.<sup>85</sup>

Essentially, this Part examines and supports the notion that restorative justice is not only suitable for the resolution of Holocaust-like situations, but also necessary for the resolution of Holocaust-like situations. Restorative justice fills the inadequacies currently found in criminal prosecution and gives victims the opportunity to face oppressors while maintaining control, provides a forum for open dialogue between victims and oppressors, and transforms the lives of all individuals involved.

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<sup>81</sup> *Eva Kor, Biography*, *supra* note 10.

<sup>82</sup> *Id.*

<sup>83</sup> Dominique Mosbergen, *Former Nazi Guard Oskar Groening Kisses Holocaust Survivor Eva Kor During His Trial*, THE WORLD POST (Apr. 27, 2015, 3:18 AM), [http://www.huffingtonpost.com/2015/04/27/nazi-guard-kiss-holocaust-survivor-eva-mozes-kor\\_n\\_7149364.html](http://www.huffingtonpost.com/2015/04/27/nazi-guard-kiss-holocaust-survivor-eva-mozes-kor_n_7149364.html).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

A. *Instituting Restorative Justice: Overcoming the Inadequacies of the Litigation in Holocaust-like Situations*

With the emergence of the Demjanjuk Precedent—which examines evidence in a more liberal manner and makes it easier to convict Nazi officials—one would think that there could be no better way to bring justice to the victims.<sup>86</sup> After all, Nazis in their late eighties and nineties are finally being ousted and convicted after seventy years.<sup>87</sup> As such, criminal prosecution continues to be the primary method of resolving these situations.

Filling the inadequacies currently found in criminal prosecution, giving victims the opportunity to face their oppressors while maintaining control, providing a forum for open dialogue between victims and their oppressors, and transforming the lives of all individuals involved are all major concerns when resolving Holocaust-like atrocities. Although restorative justice has not been formally standardized as a way of resolving these crimes, many countries have already adopted restorative justice as a viable and successful alternative dispute resolution.<sup>88</sup> For example, New Zealand has used restorative justice as the primary resolution approach in their juvenile division and the United States has recorded exponential growth in the number of entities utilizing restorative justice.<sup>89</sup> As such, this resolution approach seems like an excellent way to supplement the criminal prosecution of Nazi officials. Whereas many Holocaust victims are left feeling hopeless and underwhelmed, restorative justice would give these individuals the resolution and fulfillment that they deserve.

1. *Gives Victims Opportunity to Face Oppressors While Maintaining Control*

Unlike traditional litigation, one of the benefits of the restorative justice approach is that victims are given the opportunity to face their oppressors while maintaining control of the situation. Under this approach, all individuals affected are invited to participate in this inclusive process.<sup>90</sup> “Inclusion seeks the full participation of all parties, and it is accomplished by (1) inviting all

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<sup>86</sup> Cole, *supra* note 65.

<sup>87</sup> Mosbergen, *supra* note 83.

<sup>88</sup> Molly Rowan Leach, *Restorative Justice is on the Rise*, THE HUFFINGTON POST (July 23, 2013, 1:22 PM), [http://www.huffingtonpost.com/molly-rowan-leach/restorative-justice-is-on\\_b\\_3612022.html](http://www.huffingtonpost.com/molly-rowan-leach/restorative-justice-is-on_b_3612022.html).

<sup>89</sup> *Id.*

<sup>90</sup> *Inclusion*, CTR. FOR JUST. AND RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/inclusion/> (last visited Apr. 5, 2016).



interested parties to participate, (2) expecting the parties to pursue their own interests, and (3) being flexible enough to accept new approaches relevant to the particular situation.”<sup>91</sup> In the case of Eva Mozes Kor, she was not satisfied with the results of the Nuremberg Trials that took place in the years following World War II.<sup>92</sup> For one, her main oppressor—Dr. Josef Mengele—escaped conviction and was never brought to justice.<sup>93</sup> Then, after years of harboring hatred and distrust, Mozes Kor did the unthinkable—she publicly forgave the Nazis alongside a Nazi doctor.<sup>94</sup> Fifty years after her liberation from Auschwitz, Mozes Kor met face-to-face with Dr. Hans Münch.<sup>95</sup> After discussing their various points of view, the two individuals embraced and decided to publicly display their resolution by visiting Auschwitz together.<sup>96</sup> “An incredible weight of suffering was lifted and she felt strong. Offering her forgiveness healed Eva, [yet it] drew mixed reactions and controversy. Throughout each subsequent conversation about forgiveness, Eva remained insistent that the act was for her well-being alone and not intended to dismiss the Holocaust.”<sup>97</sup>

Because restorative justice is initiated by the victims, they essentially retain control of the situation. Victims have the ability to approach their oppressors, but also the ability to leave the situation. Unlike traditional litigation, where the parties are separated from one another, restorative justice allows face-to-face meetings with an added dimension of reality. Ultimately, in Holocaust-like situations, restorative justice provides a more satisfactory outcome for victims. Criminal prosecution should still be the primary manner of resolving Holocaust-like situations, but utilizing restorative justice as a supplementary resolution is a must.

## 2. *Provides a Forum for Open Dialogue between Victims and Oppressors*

Under the tenets of traditional litigation, victims and oppressors are not provided with a forum to fully air their grievances. For example, in some situations, victims and oppressors are invited to recite statements to each other in court. Yet, despite this small attempt at dialogue, it is usually confined to the walls and rules of a courtroom. Furthermore, rather than providing a forum

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<sup>91</sup> *Id.*

<sup>92</sup> FORGIVING DR. MENGELE (Media Process Group, Inc., 2006).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Eva Kor, Biography, supra* note 10.

for open dialogue, this is usually a one-sided statement aimed at revenge, deceit, and emotion.

Alternatively, restorative justice provides an environment where parties can speak freely in a manner that suits the personalities and emotions involved.

As David Moore has observed about [restorative justice], “in this context of shared emotions, victim and offender achieve a sort of empathy. This may not make the victim feel particularly positive about the offender but it does make the offender seem more normal, less malevolent.” Likewise, for offenders, hearing the victims’ story not only humanizes their victims but also can change the offenders’ attitude about their criminal behavior.<sup>98</sup>

In 1993, after finding puzzling information in State Department documents, Eva Mozes Kor contacted ZDF—a German public broadcasting system—and requested an interview Dr. Hans Münch.<sup>99</sup> Soon after, Mozes Kor travelled to Germany and met face-to-face with the Nazi doctor who oversaw mass murders in the gas chambers at Auschwitz.<sup>100</sup> Most notable about this meeting was the fact that both parties took initiative and voluntarily agreed to this ground-breaking interview. When she first met Münch, Mozes Kor was struck by Dr. Münch’s kind and considerate demeanor.<sup>101</sup> Eventually, she asked him about the gas chambers, and to her surprise, he did not deny this horrific event, but rather, he acknowledged the existence of the gas chambers and his involvement in signing the death certificates.<sup>102</sup> In response, Dr. Münch openly stated: “This is the nightmare I live with. I had to watch the operation of the gas chambers and then, when the bodies were dead, I had to sign the death certificates.”<sup>103</sup> This experience left Mozes Kor feeling free and restored.

Because restorative justice provides a forum for open dialogue between victims and oppressors, parties are more willing to open up and speak freely. This openness creates a situation where oppressors are often willing to accept responsibility for their actions. “The offender also accepts that there was real

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<sup>98</sup>

Encounter,

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RECONCILIATION,

<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/encounter/> (last visited Apr. 5, 2016).

<sup>99</sup>

Hans

Münch,

JEWISH

VIRTUAL

LIBRARY,

<http://www.jewishvirtuallibrary.org/jsource/Holocaust/Munch.html> (last visited Apr. 5, 2016).

<sup>100</sup>

*Id.*

<sup>101</sup>

*Id.*

<sup>102</sup>

*Id.*

<sup>103</sup>

*Id.*

harm caused by this conduct. Finally, the offender accepts that the harm caused was experienced by another human being who did not deserve the harm.”<sup>104</sup> Overall, in Holocaust-like situations, restorative justice gives a face and a name to victims while simultaneously giving oppressors a human aspect. Once again, criminal prosecution should still be the primary manner of resolving Holocaust-like situations, but utilizing restorative justice as a supplementary resolution is a necessity.

### 3. *Transforms the Lives of All Cooperating Parties*

As a supplement to traditional litigation, restorative justice has the ability to fill the inadequacies created by litigation. For instance, one major benefit of restorative justice is its ability to transform the lives of all cooperating parties. “At the most basic level, changed behavior by the offender means not committing crimes. This is why negotiated agreements will include elements such as changing the offender’s environment, helping the offender learn new behaviors, and rewarding positive change.”<sup>105</sup> However, transformation can go way beyond simply refraining from criminal behavior. “Offenders may offer to perform services that are not related to the crime or to the victim, but that are understood by the victim as evidence of a sincere apology.”<sup>106</sup> Although the mass application of restorative justice is still a work in progress, many successful outcomes have been recorded.<sup>107</sup> For example, many victims leave feeling satisfied and fulfilled, while offenders leave feeling connected with the victim on a new level.<sup>108</sup>

In 1995, two years after Eva Mozes Kor’s initial meeting with Dr. Münch, when planning her trip to Auschwitz to celebrate the 50th Anniversary of the liberation, she invited Dr. Münch to go with her.<sup>109</sup> As part of his involvement, Mozes Kor asked him to sign a document validating the existence of the gas chambers—Dr. Münch readily agreed.<sup>110</sup> Later, Mozes Kor commented on this momentous occasion and how it transformed her life:

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<sup>104</sup> *Amends*, CTR. FOR JUST. AND RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/amends/> (last visited Apr. 5, 2016).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Outcomes and Benefits*, LIVING JUST. PRESS, [http://www.livingjusticepress.org/index.asp?SEC=47AB933E-93A9-4649-B4DC-8D5A4F24DC9F&Type=B\\_BASIC](http://www.livingjusticepress.org/index.asp?SEC=47AB933E-93A9-4649-B4DC-8D5A4F24DC9F&Type=B_BASIC) (last visited Apr. 5, 2016).

<sup>108</sup> *Id.*

<sup>109</sup> *Hans Münch*, *supra* note 99.

<sup>110</sup> *Id.*

When I met Dr. Münch and he was willing to go to Auschwitz, I thought it would be nice just for my own sanity to sign an amnesty—if I somehow would be that lucky that that information would go to the people who need to hear about it, then we might remove the political strain and maybe some other Nazi criminal will come forward to testify.” Kor also found that by forgiving those who had taken away her family and her childhood, she was taking charge of her own feelings for the first time in years. She found she was in control. She was not being driven by hatred or by any other emotion. She believed she was finally free.<sup>111</sup>

However, Mozes Kor—the victim—was not the only person transformed by this instance of restorative justice. Dr. Hans Münch was also looking for a way to repair relationships, to apologize for the dealings of his youth, and to move forward.<sup>112</sup> When Münch visited Auschwitz with Mozes Kor in 1995 on the 50th anniversary of the liberation, Münch stood proudly next to Mozes Kor and recited a statement in which he acknowledged his wrongdoing and asked for forgiveness.<sup>113</sup> The following is an excerpt from Dr. Hans Münch’s testimony:

I...Dr. Hans Münch hereby attest that as an SS physician on duty in Auschwitz in 1944, I witnessed the selection process of those who were to live and those who were to die. Other SS physicians on duty in the camps made selections at the barracks. I was exempt from performing selections because I had refused to do so. I further attest that I saw thousands of people gassed here at Auschwitz. Children, old people, the sick and those unable to work were sent to the gas chambers. These were innocent human beings: Jews, Gypsies, Homosexuals, Hitler's political opponents...anyone who did not fit Hitler's idea of a pure Aryan race. I am signing this paper of my own free will to help document the cruel intolerance of my SS. I, a former SS Physician, witnessed the dropping of Zyklon B into simulated exhaust vents from outside the gas chambers. Zyklon B began to work as soon as it was released from the canisters. The effects of the gas were observed through a peephole by an assigned doctor of the SS

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

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officer on duty. After three to five minutes, death could be certified, and the doors were opened as a sign that the corpses were cleared to be burned. This is the nightmare I continue to live with fifty years later. I am so sorry that in some way I was part of it. Under the prevailing circumstances I did the best I could to save as many lives as possible. Joining the SS was a mistake. I was young. I was an opportunist. And once I joined, there was no way out....<sup>114</sup>

Essentially, this meeting—between a Nazi doctor and a Holocaust survivor—proved to be restorative not just for the victim, but also the oppressor. Dr. Münch was deeply changed by this situation, and he was able to find peace for the first time in over fifty years.<sup>115</sup> For Mozes Kor, this seminal event gave her a sense of self-power that she never knew was possible.<sup>116</sup> To her, the ability to forgive the Nazis was a right and a power that no one—not even a Nazi—could take away from her.<sup>117</sup>

Restorative justice gives victims control. Victims, who were once treated as less-than-human, now have control over this situation involving their oppressors. Here, the victims hold the power—no one can force them to forgive their oppressors—it is a choice made freely by those who wish to make a change in their life.

In the words of Eva Mozes Kor:

In my desperate effort to find a meaningful ‘thank you’ gift for Dr. Münch, I searched the stores, and my heart, for many months. Then the idea of a Forgiveness letter came to my mind. I knew it would be a meaningful gift, but it became a gift to myself as well, because I realized I was NOT a hopeless, powerless victim. When I asked a friend to check my spelling, she challenged me to forgive Dr. Mengele too. At first I was adamant that I could never forgive Dr. Mengele but then I realized I had the power now...the power to forgive. It was my right to use it. No one could take it away.<sup>118</sup>

However, it is important to note that restorative justice does not replace the justice achieved by criminal prosecution or alternative dispute resolutions

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Eva Kor (Poland)*, *supra* note 1.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

such as mediation, arbitration, or negotiation. Rather, restorative justice is an additional option that supplements the inadequacies of traditional litigation. For example, in the case of Eva Mozes Kor and other Holocaust survivors, the Nuremberg Trials sentenced a handful of Nazis; however, while the oppressors deserved death sentences and jail time, the victims were not fully relieved of their pain and suffering. As such, additional approaches such as restorative justice have the ability to fill the gaps and to make the victims whole.

B. *Applicability of Restorative Justice to Holocaust-like Situations (i.e. Maritime Disasters, Attacks of Mass Violence, etc.)*

To this point, this article has argued that restorative justice should be utilized more often to repair the harm caused to victims by criminal oppressors in Holocaust-like situations. Alternative dispute resolutions are becoming an integral part of the American judicial system, and judicial officers need to apply these techniques in a wider variety of scenarios. As evidenced by Eva Mozes Kor's experience, restorative justice has the ability not only to fill the inadequacies of traditional litigation, but also to transform the lives of all parties involved.

Here, in Part III.B, this article argues that alternative dispute resolutions, such as restorative justice, should be instituted in Holocaust-like crimes where violence and the loss of life causes severe emotional harm and societal destruction. To illustrate this point, the applicability of restorative justice to catastrophes such as maritime disasters and attacks of mass violence will be briefly explored. Overall, restorative justice should be viewed as a necessity because victims of catastrophic crimes deserve the opportunity to face their oppressors in a civil environment that gives them control of the situation; that provides a forum to allow the victims to communicate openly with their oppressors; and that transforms the lives of both cooperating parties in a manner that values their effort and collaboration.

1. *Maritime Disasters*

Maritime Disasters, such as the sinking of the *Titanic*, are often resolved with government inquiries, insurance payouts, and a change in maritime regulations.<sup>119</sup> Concerning the *Titanic*, all three of the previously mentioned resolutions were utilized—yet nothing was done to make the victims whole. After the *Titanic* sank in April 1912, inquiries regarding the actions taken by

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<sup>119</sup> See generally TITANIC INQUIRY PROJECT, <http://www.titanicinquiry.org/> (last visited April 5, 2016).

the crew and the limitation on liability were conducted by the United States and British governments.<sup>120</sup> As a result of these inquiries, outdated regulations regarding ship speed and lifeboats were revised and instituted.<sup>121</sup> Furthermore, the White Star Line's insurance group compensated individuals who lost loved ones for some of their losses.<sup>122</sup>

Yet, despite meager monetary compensation, *Titanic* victims were never given an opportunity to face their oppressors: crew members of the *Titanic*, crew members of the *Californian*, or officers of the White Star Line who allowed the ship to sail with outdated regulations.<sup>123</sup>

As learned from the experiences of Eva Mozes Kor, it is clear that restorative justice would be beneficial in maritime disasters such as the sinking of the *Titanic*. Although the victims of the *Titanic* received monetary compensation for their losses, they were never able to amend the emotional strife that lasted a lifetime. Having the opportunity to face their oppressors may have given them the ability to forgive and to move forward with their lives.

## 2. Attacks of Mass Violence<sup>124</sup>

Attacks of Mass Violence, such as the Columbine shooting in 1999 or the 9/11 Terror Attacks, usually end in perpetrator suicide or criminal prosecution.<sup>125</sup> Currently, the newspapers are filled with stories of race-fueled violence, police shootings, and cultural unrest. Rather than continually using the traditional justice system to no avail, communities should consider remedying these situations with restorative justice procedures. In Mozes Kor's situation, she found a sense of control and power that she never knew she exhibited. By utilizing her power to choose, she chose to meet with her oppressor in hopes of transforming lives.

With the racial-police tensions running high, restorative justice could be the solution that everyone has been searching for. For example, social justice activists Angela and Fania Davis are trying to bring restorative justice into the

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> For purposes of this article, attacks of mass violence include: terror attacks, school shootings, racially motivated unrest, gang violence, and other such atrocities. Because of the limited scope of this article, the Author was unable to fully detail the effects that restorative justice could have in conjunction with each of these instances of mass violence.

<sup>125</sup> Abby Rogers, *Why Do Gunmen Kill Themselves After Committing Mass Shootings*, BUSINESS INSIDER (Dec. 28, 2012), <http://www.businessinsider.com/suicide-and-mass-shootings-2012-12>.

civil rights spotlight.<sup>126</sup> After suffering from racism and prejudice for many years, the sisters decided to let go of hatred and violence in exchange for a new lease on life's struggles—a restorative justice approach to violence.<sup>127</sup> Angela Davis stated that:

Self-care and healing and attention to the body and the spiritual dimension—all of this is now a part of radical social justice struggles. That wasn't the case before...[n]ow we're thinking deeply about the connection between interior life and what happens in the social world. Even those who are fighting against state violence often incorporate impulses that are based on state violence in their relations with other people.<sup>128</sup>

In the case of Eva Mozes Kor, restorative justice allowed her become a whole person—a victim, a survivor, and an activist. Through forgiveness, she allowed herself to become a fully integrated human being who could leave violence behind her and to move forward educating others. Similarly, Fania Davis learned the same lessons:

When I learned about restorative justice, it was a real epiphany because it integrated for the first time the lawyer, the warrior, and the healer in me. The question now is how we craft a process that brings the healing piece together with the social and racial justice piece—how we heal the racial traumas that keep re-enacting.<sup>129</sup>

Having the opportunity to face oppressors gives mass violence victims the ability to forgive and to move forward with their lives.

#### IV. CONCLUSION

Ultimately, this article argues that restorative justice should be utilized more often to repair the harm caused to victims by criminal oppressors in Holocaust-like situations. If alternative dispute resolutions are expected to be used more often, then judicial systems need to be willing to apply these

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<sup>126</sup> Sarah van Gelder, *The Radical Work of Healing: Fania and Angela Davis on a New Kind of Civil Rights Activism*, YES MAGAZINE (Feb. 18, 2016), <http://www.yesmagazine.com/issues/life-after-oil/the-radical-work-of-healing-fania-and-angela-davis-on-a-new-kind-of-civil-rights-activism-20160218>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*



techniques to more types of scenarios. Alternative dispute resolutions, such as restorative justice, should be instituted in Holocaust-like situations because victims of catastrophic crimes deserve the opportunity to face their oppressors in a civil environment that gives them control of the situation; provides a forum that allows the victims to communicate openly with their oppressors; and transforms the lives of both cooperating parties in a manner that values their effort and collaboration. Here, Eva Mozes Kor's successful experience with restorative justice was analyzed and used to support the notion that alternative dispute resolutions can be successful in repairing harms caused to victims by criminal oppressors in Holocaust-like situations.

Accordingly, victims of Holocaust-like crimes want to be made whole and they want the opportunity to move forward, yet currently, the pre-existing forms of resolution are inadequate vehicles to achieving justice for the victims. In some opinions regarding restorative justice, detractors have argued that notions of forgiveness and victim-offender dialogue belittle the grave outcomes of these heinous crimes. However, while this argument contains valid concerns, it is missing a key component which this article has argued—a discussion based on the healing and transformative qualities of a restorative justice approach to Holocaust-like situations.

In the early years of the 1940s, terror and destruction rampantly obliterated the Jewish population in Eastern Europe.<sup>130</sup> While some individuals continue to blindly deny this catastrophe, the ugly truth remains: nearly two-thirds of Europe's Jewish population was exterminated within a span of just a few years.<sup>131</sup> Although many of these Nazi leaders were prosecuted through military tribunals, criminal prosecution is just one example of resolving disputes in our society today.

With the rising popularity of alternative dispute resolutions, these techniques are becoming a contemporary phenomenon in twenty-first century judicial systems; however, these alternative methods need to be utilized equally in all areas of the law—especially with regards to Holocaust victims and their Nazi tormentors. At first glance, restorative justice may seem like an appalling and futile option; however, it has flourished and succeeded in Holocaust victim scenarios, and it offers a solution for victims and oppressors to heal in a cathartic and liberating manner. As illustrated by the story of Eva Mozes Kor, restorative justice gave her the ability to eliminate decades of anger and resentment. When she publicly forgave the Nazis for what they did to her and family—she was truly and finally liberated.<sup>132</sup>

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<sup>130</sup> DAWIDOWICZ, *supra* note 2.

<sup>131</sup> *Id.*

<sup>132</sup> *Eva Kor, Biography, supra* note 10.

Eva Mozes Kor's story needs to be shared on a wider scale and the world needs to be educated about the benefits of restorative justice. While criminal prosecution provides some justice for victims, things need to change. Maybe, when restorative justice techniques are equally utilized in crimes such as maritime disasters and attacks of mass violence, we will see a different scenario. Hopefully, the victims will choose to face their oppressors in hopes of transforming not only their lives, but the lives of their oppressors and beyond.